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Current Topics.

Birthday Honours.

THE honour of knighthood conferred on Mr. GEORGE S. POTT, the President of the Council of The Law Society, is a recognition of his service to the State, both as President of the Council and otherwise. Last August Mr. POTT was appointed Vice-Chairman to the Incorporated Council of Law Reporting for England and Wales, being the first solicitor to hold this office. The legal profession also feels itself honoured by the knighthood conferred on Dr. ARNOLD DUNCAN MCNAIR, Vice-Chancellor of Liverpool University, a leading authority on international law, and up to 1937 Whewell Professor of that subject at Cambridge University. He had been a member of the Greene Committee on miners' wage claims. Alderman FREDERICK HINDLE, a well-known public figure in Lancashire, is another solicitor who has been knighted. In July, 1941, he was appointed Deputy Regional Commissioner for the north-west, and was in charge of a department concerned with the administration of "after-raid" services. In 1912-13 he was Mayor of Darwen, and is a member of the Lancashire County Council. He was Liberal Member of Parliament for Darwen from 1923 to 1927. We also congratulate the Chief Registrar of Friendly Societies and Industrial Assurance Commissioner, Mr. JOHN FOX, on his knighthood.

Advocacy and Ethics.

MOST advocates would agree that their work is highly difficult and exacting. The problems that regularly face them are not merely those of art but also of conscience, and on these matters one must look for guidance to the recognised professional organisations, and also to the knowledge and experience of one's elders and betters. At the twelfth Haldane lecture, given on 3rd June, at Birkbeck College, Sir GERVAIS RENTOUL, K.C., gave a penetrating study of "The Art and Ethics of Advocacy." He defined advocacy as the art of presenting a case to a tribunal so as to obtain a desired result, and emphasised the need for the advocate to have a knowledge of human nature, particularly a knowledge of the nature of the judge and jury, and the ability to put himself in the position of the judge. Counsel, he said, is a co-operator in the search for truth, and it is important to present his case in an orderly fashion as well as to anticipate the points that are likely to be made against him. Talking of the need for humour and good temper, Sir GERVAIS instanced LORD CARSON as an advocate who was skilled in laughing a case out of court. He also spoke of the necessity to be interesting and to grip the court's attention, while avoiding theatricality, and underlined the keen demands made on the intellect by the art of cross-examination at its best. Lawyers, the lecturer said, were suspected, possibly because they possessed the "gift of the gab," but a complicated society required complicated laws and a class of specialists to advise on the meaning and application of those laws. The advocate had a divided responsibility, partly to the public as a whole and partly to his client. He referred to the difficult position that arises where a client confesses his guilt to his counsel, and said that if the confession was made before the start of the case, the advocate must not undertake the case but must tell the client to go elsewhere, and if it is made in the course of the case, the advocate must not abandon it but must continue to represent his client. He said that in criminal defence it was his view that nothing detrimental to the client should be disclosed but in criminal prosecution everything that weakened the prosecution should be revealed. It was, however, impossible to lay down hard and fast rules on nice questions of professional morality. Sir GERVAIS concluded by saying that if the Bar were destroyed liberty itself would be destroyed. Everyone with the smallest knowledge of the law and the part played by the advocate in the search for truth and justice will respectfully concur.

The American View.

BY way of a footnote to Sir GERVAIS RENTOUL's excellent message to the profession in England, we cannot do better than quote an editorial by Professor JAMES D. BARNETT, of the University of Oregon, in the *Oregon Law Review* for February, 1943, on "Bad Advice to Young Lawyers." The article quotes extracts from a number of well-known books on advocacy in use in the States, and points out their lack of ethical foundation. Professor BARNETT roundly condemns those who liken a lawsuit to a battle, and talk of tactics, strategy, defence, ambush, surprise, and so on, in connection with what should be a pursuit of justice. The professor notes, with somewhat more mild criticism, the likening of a trial to a game of chess or cards or to a play. "How far is this," he writes, "from the ideal of Judge POUND, who declared: 'It would be a great advance toward the efficient administration of justice, if procedure in courts should become as matter of fact as the business methods of the oyster bar in Grand Central Station.'" The books seem to emphasise the importance of personal magnetism and charm in a good trial lawyer. Apparently there are many parts of the States where an air of piety goes down well with a jury, and some books recommend the lawyer to "assume a virtue if you have it not." One book recommends the advocate to attempt to deceive the jury as to the adverse character of evidence and "smile at answers which hurt him most." This advice, even if sound, obviously cannot apply to trial before a judge alone. A trial lawyer is quoted as saying that "no advocate ever built a reputation by dealing exclusively with the relevant." Lawyers are also advised to adapt themselves to the caprices, whims and prejudices of different juries and judges. They are further recommended to appeal to the emotions of juries, and even of the public gallery, in order to obtain a favourable atmosphere. The writer states that "shrewdness," "sagacity," "subtlety," "astuteness," "ingenuity" and "slyness" are virtues recommended for the benefit of youth by leaders of the Bar, and concludes, "Success! Justice? Shame!" The public anxiety to preserve the integrity of judicial proceedings is obviously as keen "over there" as it is here. As long as this anxiety remains for justice to be effective, so long will the preference for liberty under law endure.

Income Tax Allowances.

IN the Committee debate on the Finance Bill in the Commons on 2nd June, Sir JOHN MELLOR drew attention to two points in connection with income tax. The first was that the children's allowance was granted irrespective of whether the parent contributed to the maintenance of the child or not. In his income tax return the parent had only to make a declaration of the existence of the child and that it was under the age of sixteen, or, if over that age, to declare that the child was still undergoing education, and further that it had not more than a certain amount of income in its own right. The present position, he said, had existed since 1920, but it had assumed more importance since the war owing to large scale evacuations. The obligation of the Minister of Health to collect through the local authorities in the evacuation areas the contributions which parents should make towards the cost of billeting the children was, said Sir JOHN, very loosely enforced. He said it was fair to compare the declaration made by a married man who claimed the personal allowance appropriate to a married man. He had to state that his wife was living with him or was wholly maintained by him. The second point was that considerable hardship was caused in war time from the fact that the cost of accommodation elsewhere was not allowed as a deduction from the profit of letting a furnished house. If, he said, 500 people let their homes in Wales to 500 people from England, and *vice versa*, at the same furnished rent, the Chancellor of the Exchequer taxed 1,000 so-called profits, and yet, there was no net profit whatsoever to any of the persons so taxed. In the leading case of *Wylie v. Eccott* [1913]

S.C. 16, it was held that the deduction of the rent of other accommodation was inadmissible. It was important that some concession should be made, in order to promote the mobility of the population. Another important point was that the high cost of furnished accommodation was largely due to the fact that a person who wanted to let his house in one place and could not make up for the tax on the income derived therefrom by taking a house at the same rent elsewhere, did all he could to charge an even higher rent for his own house. Sir KINGSLEY WOOD, in reply, said that Sir JOHN MELLOR's suggestions had been of value in the past to those in the Government who were engaged on this subject. He disputed the fairness of the analogy between the children's allowance and the married man's allowance, and on the question of the taxation of profits from the letting of a furnished house, he said that an allowance was given in respect of the annual value of the house and depreciation and other outgoings. No question arose of double taxation, nor was the question of the cost of alternative accommodation, when the taxpayer lived elsewhere, relevant, since the cost of living, which included rent payable by the taxpayer himself, obviously could not be an allowable deduction for income tax purposes. In answer to a question by Mr. T. J. BROOKS as to whether there would be an allowance for a man whose sister was keeping house for him, Sir KINGSLEY WOOD said that he thought that there was an amendment to be moved shortly, relating to allowances for a sister or daughter.

The Public and the Emergency Law.

VARYING aspects of the vague feeling of public discontent with the almost terrifying bulk and complexity of the emergency law promulgated during the present war have recently been discussed both in the Press and Parliament. On 26th April a provincial delegate (Mr. J. N. M. PEDDIE, of Hull) at the Co-operative Party Conference complained of the unfairness of the food regulations. He is reported to have said that it needed the cunning of a Philadelphia lawyer and the honesty of an archangel to keep clear of food prosecutions to-day. It was exceedingly difficult, he said, in these days for anyone connected with food distribution to keep out of the courts. Those holding administrative positions in retail shops were overwhelmed with the multiplicity of statutory orders and regulations which flooded upon them day after day. It must be a nightmare, he said, to have to carry them out. When a co-operative society with a large number of shops was prosecuted, he added, previous convictions against all the shops were taken into account. After his speech a resolution was passed, asking that in court proceedings against a particular branch only prosecutions against that branch should be mentioned. Solicitors in this country who have attained some modicum of skill in interpreting the emergency law and in handling the regulations in the police courts may resent as an invidious comparison the unsolicited testimonial to the lawyers of a great American commercial and educational centre. It would be indeed a bold course for defending solicitor or counsel in a food prosecution to put forward either as a defence or as mitigation that the regulations are either impossible to understand or to apply, and in the average case there would be little hope of success in such a plea. As we insist on eating a variety of foods in proportions which vary from individual to individual, the very necessary regulation of the distribution of the short supplies of food in war time must be complex. Strangely enough there do not seem to have been any cases of grocers growing prematurely grey under the stress of war-time regulation. On the contrary, the reduction in the number of bankruptcies seems to indicate that increased regulation and the assurance of registered customers have combined to give them a greater security. There seems at first sight to be some ground of complaint at the recitation in open court of previous offences by other branches of the same society. In fact, however, this is unavoidable if all the branches are controlled by the same legal *persona* and that *persona* is the defendant to the proceedings. Without a doubt it then becomes legitimately a matter for the discretion of the bench to decide to what extent the repetition of offences of a similar character by the same organisation, albeit in different branches, must be attributed to the responsibility of that organisation. This discretion, in our view, should not be hampered in any way. Benches of magistrates frequently are faced with much more difficult problems of punishment. One which is well known to grocers and to those who supply them is that of selling to the prejudice of the purchaser a food or drug which is not of the substance or nature or quality demanded, contrary to s. 3 of the Food and Drugs Act, 1938. The more widely a commodity has been distributed, the more numerous become the prosecutions against the person responsible for the distribution, and the more difficult becomes the task of the bench in considering what weight to attach to previous convictions for the same offence, until the last vestiges of the food or drug have disappeared from the market. Food purveyors must even in peace time put up with regulations designed to protect the community, and no unprejudiced person will fail to see the necessity for increased regulation in war time.

New Motor Fuel Restrictions.

A NEW order made by the Ministry of Fuel and Power (The Control of Motor Fuel Order, 1943 (S.R. & O., No. 780)), will prevent any abuse of the system of "drive yourself" car hiring in order to get more than the proper supply of petrol. Petrol will be permitted to be supplied for cars hired without drivers only for journeys within a ten-mile radius, and only for (a) a journey for urgent domestic purposes, or (b) a journey in connection with essential services where other means of travel are not practicable. Cars hired with drivers are subject to the same restrictions as hitherto as to the supply of petrol and no new restrictions are imposed. In a statement issued by the Ministry of Fuel and Power it has been pointed out that the object of the new order is to put a stop to the widespread practice of using the "drive yourself" car for pleasure purposes. One glaring example of the misuse of the system was plying as taxis in London. The order is also intended to prevent the well-known abuse by which car proprietors masquerade as persons conducting the business of hiring out cars in order to obtain increased allowances of petrol. In a case described by the Ministry a pseudo-hire firm used its allowance for the conveyance of a dance band formed from the members of the firm and their relatives.

Social Insurance and the Nuffield Trust.

No more practical way of showing a belief in the necessity of abolishing social insecurity could have been devised than that recently adopted by the Nuffield Trustees in constituting an association to help its members and their families to meet the cost of hospital and specialist treatment or private ward or nursing home treatment, with free choice of consultant or specialist services. The Nuffield Provident Fund guarantees the association's solvency up to £150,000. The association has been named the Central Provident Association. In a public statement by the authors of the scheme, it is said that the Beveridge Report contemplated a comprehensive health service for all classes, but when this materialised there would still be many families desirous of making their own arrangements for private ward or nursing home treatment with free choice of consultant or specialist services. Membership of the association is open to anyone under the age of sixty, who lives or is employed in any part of England, Wales, Scotland or Northern Ireland, other than the London area, where a hospitals service association has already been sponsored by King Edward's Hospital Fund. The benefits do not include contributions towards general medical practitioners' services, but £6 a week will be paid towards hospital or nursing home treatment for a member or his dependents for a period of six weeks in any one year. The maximum for any one family in any one year will be £36. Grants will be made in respect of consultant and other specialist services up to a maximum of £70 for any adult member's operation or illness, of £35 for a child, and of £105 to any one family in any one year. The annual contribution is to be £2 15s. for a member without dependents, £4 10s. for a husband and wife, and 10s. for each child under eighteen. The address of the central association is 16, King Edward Street, Oxford, but area sections are being organised in important centres.

Recent Decisions.

In *Brookes v. Birch and Others*, on 1st June, WROTTESELEY, J., held that a notice by a War Agricultural Executive Committee to dispossess the plaintiff of his farm was not invalid because of misdescription of one enclosure, or because of omission to notify the plaintiff which ground specified in reg. 51 of the Defence (General) Regulations was relied on. His lordship also rejected the argument that the notice was bad owing to an omission to obtain the consent of the Minister of Agriculture before giving notice, as under the Cultivation of Lands Order and reg. 51, the Minister had power to delegate his authority to the committee. His lordship further held that the person to be dispossessed was in fact not entitled to notice.

In *In re Anglo-International Bank, Ltd.*, on 1st June (*The Times*, 2nd June), the Court of Appeal (the MASTER OF THE ROLLS, LUXMOORE and GODDARD, L.J.J.) gave their reasons for reversing the decision of BENNETT, J., that a special resolution necessary for a reduction of capital was not properly passed where notice of the general meeting to pass the resolution had not been sent to ninety-nine shareholders who had addresses in enemy or enemy-occupied territory. The court held that the resolution was valid, because although the shareholders in question might not all be alien enemies at common law, nevertheless by s. 1 (2) (a) of the Trading with the Enemy Act, 1939, the company was forbidden to have "any commercial, financial, or other intercourse or dealings with or for the benefit of an enemy," and it would therefore have been an offence merely to put in the post notices addressed to them at their registered addresses. That was equivalent to suspending their right to receive notices.

In *Royal Choral Society v. Commissioners of Inland Revenue*, on 1st June (*The Times*, 2nd June), the Court of Appeal (the MASTER OF THE ROLLS, MACKINNON and DU PARCQ, L.J.J.) held that the Royal Choral Society was established for charitable purposes only and that its income was solely applied for such purposes.

Procedure in 1943.

Until June : Summary.

"How rich and great the times are now!" And a "leading case"—with a speech of Lord Wright—upon the meaning of enemy-occupied territory and of the enemy status of a company incorporated under its laws (the *Sorfracht* case). But a company which transfers its business from enemy-occupied, to neutral, territory may continue proceedings previously begun (*The Pamia*). The court will not dispense with service where the respondent to a petition for divorce on the ground of desertion is resident in enemy-occupied territory (*Luccioni v. Luccioni*). Since the Minister of Supply may sue and be sued for breach of contract, if he brings an action a counter-claim may be raised against him (*Minister of Supply v. British Thomson-Houston Co., Ltd.*). Where the trial is by judge alone an insurance company may be added as a third party in a running-down action (*Harman v. Crilly*). In the winding-up of a company third-party procedure is not applicable (*Re A. Singer & Co. (Hat Manufacturers), Ltd.*). Where negligence is admitted in the defence, a defendant cannot pay into court with a denial of liability (*Davies v. Rustproof Metal Window Co., Ltd.*). What is the legal duty of a judge where a doctor certifies that a party is too ill to attend? (*Dick v. Piller*). Letters from an applicant's commanding officer are admissible under the Evidence Act, 1938, since to call him would involve undue delay and expense (*Baggs v. London Graving Dock Co., Ltd.*). The Limitation Act is not suspended because a creditor becomes an executor (*Trustee in Bankruptcy of Bowring-Hanbury v. Bowring-Hanbury*). An order which is a nullity may be set aside *ex debito justitiae* in the inherent jurisdiction of the court without the need of an appeal (*Craig v. Kanseen*). The court may, in its discretion, allow a solicitor to withdraw a bill of costs and serve a fresh bill (*Re A Solicitor, Re Taxation of Costs*). The refusal of a county court judge to adjourn a case on a doctor's certificate that a party is ill is an error in law on which an appeal lies (*Dick v. Piller*). Where a person becomes an enemy alien, a retainer given to his solicitors is determined (the *Sorfracht* case).

ALIEN ENEMY.

Where a neutral or allied country has been effectively subjugated by the enemy and is held under his dominion and control for such a period as to show a relatively permanent character, and an intention to keep it unless it is reconquered, that country is, at common law, enemy territory (*V/O Sorfracht v. Gebr. Van Udens Scheepvaart en Agentuur Maatschappij* [1943] 1 All E.R. 76, per Lord Wright, at pp. 84, 85; see the whole speech at pp. 80-93); [1943] A.C. 203.

Secus, where the occupation is merely temporary, e.g., by a military force in the conduct of belligerent operations (*ibid.*, at p. 84).

The inhabitants of such countries, or traders who, although not personally present, have a "commercial domicile" there, are enemies at common law while such occupation lasts (*ibid.*, at p. 89).

Enemy character depends not upon nationality but upon domicile in the sense of settled residence or, in the case of traders, commercial domicile (*ibid.*, at p. 84).

"The test is objective and depends on facts, not on the person's prejudices or passions, his patriotism or his determination to free his country whenever he can. . . . This enemy character depends on objective facts, not on feeling or sentiment, or on birth or nationality" (*ibid.*, at pp. 84, 89).

Metropolitan Holland (semble also, the Dutch East Indies), Northern France (semble, Metropolitan France), Belgium, Norway and other countries at present occupied by Germany, are, at common law, enemy territory (*ibid.*, at pp. 89, 92).

NO RIGHT TO SUE.

"The right to sue or prosecute an action in court, the right to claim to be exempt from seizure and condemnation in prize, the liability of punishment for the offence of trading with the enemy, all depend alike on whether the person has *enemy character* in what has been called the *technical or territorial sense*" (*ibid.*, at p. 84).

The Dutch in Holland are thus, *alien enemies*. "They cannot sue or appear as actors in the English courts, they cannot trade with England, their property in England is subject to the Trading with the Enemy Act and regulations" (*ibid.*, at p. 89).

SAVE BY ROYAL LICENCE.

Since the Crown declares war and makes peace, the Crown may exempt particular territories from enemy status or may grant permits or licences to particular individuals. "The disabilities of enemy status are *pro tanto* removed" (*ibid.*, at p. 90), citing Lord Stowell in *The Hoop* (1799), 1 Ch. Rob. 196, 199.

"The rule that an alien enemy cannot sue in our courts seems to be more ancient and more stringent than the rule against trading with the enemy, though both rules are equally corollaries of the status of enemy" (*ibid.*, at p. 90).

The decision in *Rodriguez v. Speyer* [1919] A.C. 59, that where a partnership of six, five members of which were English and one German, became dissolved in 1914 on the outbreak of war, an action might be brought in the winding-up in the names of

all the partners, must be limited to its special facts. The decision is not to be extended as giving the court a general liberty to exercise the discretion to give or refuse a licence. "The discretion is for the executive and is not for the court" (*ibid.*, at p. 91).

It was open to the Dutch company in the present case to take steps to obtain a licence. If they were successful, they could initiate fresh proceedings. The plea that the plaintiff is an alien enemy is not in bar, but in abatement (*ibid.*, at pp. 90, 91, citing "Bullen and Leake," 3rd ed. (1868), p. 475, and *Le Bret v. Papillon* (1804), 4 East 502).

When the company became an alien enemy the retainer held by its solicitor was abrogated (*ibid.*, at p. 92, citing the *Daimler* case [1916] 2 A.C. 307, and agreeing *obiter* with the "powerful" dissenting judgment of Scrutton, L.J., in *Tingley v. Muller* [1917] 2 Ch. 144). See also *ibid.*, at p. 102, per Lord Porter.

A royal licence cannot operate retrospectively so as to legalise acts which, at the time they were done, were unlawful (*ibid.*, at p. 83).

A licence should be obtained from the Crown, not from the Board of Trade: per Viscount Simon, L.C., in the *Sorfracht* case [1943] A.C. 203, 208, *in arguendo*, commenting on the licence from the Board of Trade obtained in *The Fibrosa* case [1943] A.C. 32, 35.

Semble, the parties cannot by consent treat the proceedings as having taken place before the date of a licence or authority. Parties cannot, by agreement, "waive a breach of the public and criminal law of the nation, so as to render lawful what was illegal" (*ibid.*, at p. 83).

FACTS IN SOFRACHT CASE.

The facts in the *Sorfracht* case were these: A Dutch company with its principal place of business at Rotterdam owned a steamship chartered before the war to the appellants. The company made claims under the charter-party which, in April, 1940, were referred to arbitration, and each party appointed an arbitrator. In May the Germans occupied Holland. The company's solicitors then applied to the Custodian of Enemy Property for his approval to proceed with the arbitration, undertaking to account under the Trading with the Enemy Regulations for sums recovered. The Custodian replied that he had no objection, but this letter had no legal validity as a "licence" to proceed. The appellants and their arbitrator refused to proceed and the respondents took out a summons asking for the appointment of an umpire. Master Ball made the order; Asquith, J., confirmed it, and an appeal was dismissed by the Court of Appeal (Lord Greene, M.R., Goddard and du Parcq, L.J.J.) ([1941], 3 All E.R. 419). They held that the company was an enemy corporation within the Trading with the Enemy Act, 1939, ss. 2, 15 (1), but was not an alien enemy at common law. While the case was before the Court of Appeal, an adjournment was granted to enable an application to be made to the Trading with the Enemy Branch (Treasury and Board of Trade). In October, 1941, that branch gave an authority to the company's solicitors, under Trading with the Enemy Act, 1939, s. 1 (2), proviso (i), to continue to act for the company, expressed to operate retrospectively until May, 1940. The letter stated that it was for the court in the arbitration to decide whether the owners, being in enemy-occupied territory, were entitled to proceed, and that money recoverable by the owners must be reported to the Custodian.

The House of Lords held that this Dutch company, being in enemy-subjugated territory, was at common law an alien enemy, and that it could not prosecute proceedings in the English courts. When the company became an alien enemy, the retainer held by its solicitors was abrogated.

The "authority" given in the present case dealt only with the matter of trading with the enemy, not with the inability to proceed in court (*ibid.*, p. 83). The Court of Appeal held that since the company was a statutory enemy (though not an enemy at common law), its solicitors could not act without a licence. The licence was not retrospective, but the court accepted the position that this difficulty was overcome by consent of the charterers' counsel that proceedings should be deemed to have taken place before the date of the authority. Lord Wright strongly doubted the propriety of this course (*ibid.*, at p. 83). (See also the observations of Lord Sumner in *Rodriguez v. Speyer* [1919] A.C. 59, 111, criticising the course permitted by the House of Lords in *Janson v. Driefontein Consolidated Mines, Ltd.* [1902] A.C. 484.)

If the company had made a proper application for a licence to pursue its claim, no difficulty apparently need have arisen (*ibid.*, at p. 90). (See *The Fibrosa* case [1942] 2 All E.R. 122, 124 (H.L.), where the appellants, a Polish company, at the suggestion of the House, applied to the Board of Trade for licence to proceed with the appeal, although they might be in the position of an alien enemy.) The *Sorfracht* case had, at that time, been decided by the Court of Appeal, but the House expressed no opinion whether the decision of that court should be approved. Upon this licence, see [1943] A.C. 203, 208, per Viscount Simon, L.C.

BELGIAN COMPANY: COMMERCIAL DOMICIL IN U.S.

Where, however, a Belgian company (a subsidiary of an American company), owners of a motor vessel, in October, 1939,

issued a writ for damages by reason of a collision, against an Italian company which owned a steamship, and in June, 1940, by an extraordinary resolution, the plaintiffs transferred their head office to Pennsylvania, under the provisions of a Belgian decree of February, 1940, Bucknill, J., held that the plaintiffs had established a commercial domicile in the United States and that the action could continue (*The Pamia* [1943] 1 All E.R. 269).

It will be observed, however, that the resolution was not passed until June, 1940, over one month after Belgium was subjugated.

See Arnould, "Marine Insurance," 9th ed. (1939), s. 95, note (2), and *The Anglo-Mexican* [1918] A.C. 422, 425.

(To be continued.)

Criminal Law and Practice.

Adjournments.

THE rather exceptional case of *Dick v. Piller* (p. 211 of this issue), on 4th May, in which the Court of Appeal allowed an appeal and ordered a retrial of a county court case on the ground that the defendant was wrongly refused an adjournment by the county court judge, which he required in order to enable him to attend the trial, raises the question of the position of defendants in criminal cases where they require further time to prepare a defence, as well as the position of the prosecution in asking for adjournments. As a rule courts are only too anxious to be fair, and neither to prolong unnecessarily the anxious time through which accused persons are passing nor on the other hand to deny them any necessary time for preparing their defence or getting in touch with material witnesses. Cases inevitably occur, however, in which advocates and the court do not see eye to eye on this important matter.

The statutory provisions relating to adjournment seem to give the justices a discretion. For instance, s. 16 of the Summary Jurisdiction Act, 1848, dealing with the hearing of informations, expressly states that it shall be lawful for any one justice or the justices to adjourn the hearing "to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties . . .", and, if either of the parties do not appear personally or by their counsel or attorneys on the adjourned hearing to hear and determine the case as if they had appeared.

On this question of adjournment and the Act of 1848, a peculiar case was argued and decided in 1862. A full report of the argument and the decision is to be found in 26 J.P. 244 (*Ex parte Biggins*). The headnote refers to s. 12 of the Act, which provides (*inter alia*) that the party against whom a complaint or information is laid "shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively and to have the witnesses examined and cross-examined by counsel or attorney on his behalf." The justice refused an adjournment to allow the accused persons to obtain legal assistance. It was argued that this refusal was against the letter and the spirit of the statute, and "the justice might just as well have tried the men behind their backs." Crompton, J., replied that the reason for s. 12 was because formerly it was in the discretion of justices to refuse to hear attorney or counsel even if actually present. Cockburn, C.J., said that no doubt the justice ought in sound judgment to have adjourned the hearing, but asked whether the court could interfere if he exercised a wrong discretion. He added that the refusal to adjourn did not take away the jurisdiction of the justice. Blackburn, J., even doubted whether the justice's jurisdiction would be taken away if he refused to hear an attorney who was present, and suggested that a criminal information would lie in that case. The court refused to interfere with the exercise by the justice of his discretion.

In *R. v. Cambridgeshire JJ.*, 44 J.P. 168, the court again refused an order of *certiorari* to quash a conviction where a summons was left four days before the hearing at the house of the accused, but it did not reach his hands until the morning of the hearing, and his foreman having attended to ask for an adjournment, the adjournment was refused. The ground for the decision, as reported, was that "the justices were satisfied that there was reasonable time to instruct a solicitor if so inclined."

These authorities show, to adopt the language of Lord Coleridge, C.J., in *R. v. Evans*, 54 J.P. 471, that "the discretion of magistrates is not to be interfered with so long as that discretion is based on fitting materials," or, as Lord Esher, M.R., put it in the same case: "If the magistrate has exercised his discretion upon legal grounds, . . . the court will not interfere with him merely because they would have exercised the discretion in another way." In that case the magistrate adjourned a case of criminal libel until a pending action for a different libel arising out of the same facts was disposed of. A rule absolute was issued for a *mandamus* on the ground that the magistrate had exercised his jurisdiction on something extraneous, and that that was tantamount to declining jurisdiction.

The practice in the Court of Criminal Appeal appears to be to grant an appellant every opportunity of calling material

evidence. In *R. v. J. A. Gray*, 1 Cr. App. R. 154, 225, by a mistake of counsel or the solicitor for the appellant, no adjournment had been asked for in order to enable the appellant to call his wife, who was awaiting confinement. The court granted leave to appeal and leave to call the witness. This practice is, however, statutory, being given by s. 9 (b) of the Criminal Appeal Act, 1907, to the Court of Criminal Appeal, "if they think it necessary or expedient in the interests of justice" and "for the purposes of this Act." This section appears to give the court a statutory right to interfere where owing to the refusal of an adjournment or for other reasons, a material witness has not been called. The rarely exercised power of the Court of Appeal to interfere with a High Court judge's exercise of his discretion, as laid down by Atkin, L.J., in *Maxwell v. Keen* [1928] 1 K.B. 645 (quoted by Croom-Johnson, J., in *Dick v. Piller*, *supra*), "if it appears that the result of the order made below is to defeat the rights of the parties altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties" is analogous to the power of the Court of Criminal Appeal in this respect. The strange result of the authorities would therefore appear to be that the discretion of the justices to order an adjournment is less restricted than that possessed by the higher courts.

A Conveyancer's Diary.

Infants' Settlements.

IN *Re Adams* [1943] Ch. 155, a female infant, more than seventeen years of age, having married, took out a summons (by her mother) *ex parte* asking that a proper settlement of her property might be sanctioned by the court. She submitted proposals for such settlement and asked that she might be at liberty to execute such settlement. The proceedings were, of course, under the Infant Settlements Act, 1855. The infant was not a ward of court, and since the proposed settlement was a post-nuptial one there was thought to be doubt as to the court's jurisdiction in the matter. The doubt was founded on a passage in Daniell's "Chancery Practice," 8th ed., p. 997, where it is stated that, having regard to *Re Potter* (1869), L.R. 7 Eq. 484, the court "has no jurisdiction to settle the property of an infant who has married after she was of competent age to contract marriage, and who was not a ward of court." In "Seton" (7th ed., p. 1016), on the other hand, there is the rather different proposition that "Where the infant is not a ward of court, and does not consent to the application [my italics], there is no jurisdiction under the Act or otherwise to direct a post-nuptial settlement."

Re Adams came before Simonds, J., upon a Chambers summons, and has been reported by the direction of the learned judge, who held that the statement in "Seton" was preferable to that in "Daniell"; he relied on the decision of the Court of Appeal in *Re Sampson & Wall* (1884), 25 Ch. D. 482. It may be convenient here to give some account of the Act and cases.

The Act is in four sections, of which the last lays down that "Nothing in this Act contained shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years." The only other passages relevant for the present purpose are the preamble and the first part of s. 1: "Whereas great inconveniences and disadvantages arise in consequence of persons who marry during minority being incapable of making binding settlements of their property; for remedy whereof be it enacted as follows: 1. From and after the passing of this Act it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement or contract for a settlement of all or any part of his or her property . . ." It will be observed that there is no distinction between wards of court and other infants: nor is there anything in the preamble or elsewhere to suggest that the Act is confined to pre-nuptial settlements.

In *Re Potter* a female infant of seventeen was entitled to certain property contingently upon her attaining twenty-one. At seventeen, however, she contracted a marriage with an infant of nineteen. The bridegroom was obviously from quite a different walk of life and his widowed mother was in receipt of parish relief. The marriage was, moreover, surreptitious. It seems that the bride's uncle felt that he ought to get her property safely tied up for her, and he therefore started proceedings under the Act, as the lady's next friend, asking that a proper settlement might be sanctioned by the court. This step was taken without the infant's approval, and Malins, V.C., dismissed the petition with costs, which thus fell on the next friend. The passage which appears to have caused the trouble is the second paragraph of his judgment, which is as follows: "In my opinion the Act does not give me jurisdiction to sanction a post-nuptial settlement where the lady is not a ward of court." This paragraph is, I think, unfortunately reported, as it is quite clear from the preceding paragraph that what was troubling the court was the want of jurisdiction over the property of persons who are not wards, the word "jurisdiction" being used in the sense of the court having power to order something to be done with the property; that is not at all the same thing as power to grant an infant a

facility, which she does not otherwise possess, to do something herself with her own property. That such was the point comes out quite clearly in the third paragraph, where the Vice-Chancellor observes that the infant and her husband objected to the application. It is clear that what he had in mind was that this was not a case of an infant wanting to sign a settlement and coming to the court (by a next friend in whom the infant confided) for a sanction to validate her signature. She objected to the whole affair and clearly was not going to sign anything except under duress. The question was whether there was power under the Act to force a non-ward to sign a settlement in the same way as the court used to order husbands of infant wards to settle the personality acquired by them *jure mariti*. Obviously the answer was "No"; and the distinction between pre-nuptial and post-nuptial settlements did not really arise at all, though counsel for the husband naturally argued, among other things, that the Act did not apply to post-nuptial settlements; the Vice-Chancellor, in the passage quoted, spoke of "post-nuptial" settlements presumably because that was the sort of settlement which was before him.

Re Sampson and Wall was quite a different sort of case, and is worth reading from the point of view of social history alone. Fanny Wall and her brother Edward were wards of court by virtue of proceedings started in 1876. In 1883 Captain Sampson "paid his addresses to Miss Wall with the consent of her mother." Fanny was then nineteen and of Protestant upbringing. Captain Sampson was a Roman Catholic of forty. Otherwise there seems to have been nothing against him, and he was not even impoverished. The infant had, however, another guardian besides her mother, and on his application an order was made on 20th June, 1883, restraining Captain Sampson from marrying Miss Wall and from all communication with her. On 21st June, with full knowledge that Fanny was a ward of court and of the injunction, Captain Sampson eloped with her and they were married at a register office. It further appears from the judgment of Kay, J., that the captain then took his wife away and concealed their residence until an application was made to commit to prison his brother who knew their whereabouts. He then surrendered and was committed to Holloway Prison on 18th July, 1883, where he stayed until an unspecified date later than 14th January, 1884. As contempts of court go, Captain Sampson's was about as gross as can be imagined and his time in prison was not a particularly severe punishment for it. But it was quite a different thing when the indignation of all concerned expressed itself in a proposal that the wife's considerable property should be compulsorily settled on such trusts that the captain could never get any of it, even by his wife's exercise of an otherwise general testamentary power of appointment in default of issue. It is not clear who originated such an idea, because we are told that the court ordered a "proper" settlement of the wife's property, and the next we hear is that a settlement as stated above was "prepared" and that the wife objected to it. Mr. Justice Kay evidently felt it necessary to uphold the proposed settlement as giving effect to the rule that a person who, in contempt of court, marries a ward must not get any interest in the ward's property. But, as the Court of Appeal pointed out, it is one thing to say that the delinquent is not to get any interest in the ward's property, a point of very great importance before the Married Women's Property Act, it is another to say that the ward must be forever debarred from giving the delinquent any interest therein even by will. The way in which the court had been in the habit of securing its objection was apparently to compel the husband of a female ward to settle the property which he had acquired from her, presumably on pain of continued incarceration; but as Captain and Mrs. Sampson had married after the coming into force of the Married Women's Property Act, 1882, the wife's property continued to be for her separate use. She thus had power to settle the property under the Infants Settlement Act (though not otherwise), and Kay, J., ordered her so to settle it. As she was a ward and, indeed, had committed a contempt of court, she could, obviously, be ordered to take any suitable step; the court thus ordered her to execute the settlement in question and then sanctioned it under the Act. In the Court of Appeal the point was taken that a settlement could not be sanctioned under the Act once the marriage has taken place. Lord Selborne, L.C., and Fry, L.J., held that a post-nuptial settlement *can* be sanctioned under the Act. Cotton, L.J., had doubts, but did not dissent. The grounds for the decision were that the Act gave power to sanction a settlement "upon or in contemplation of" marriage: as the second part of this disjunctive expression referred to pre-nuptial settlements, the first part would mean settlements made upon the occasion of the marriage whether before or after it. Further, the Act refers to a contract for a settlement; that would normally mean a pre-nuptial contract for a post-nuptial settlement. Having thus held that a settlement could be sanctioned, the Court of Appeal modified the proposed document to accord better with Mrs. Sampson's wishes; the modified settlement was executed and the peccant captain was set at liberty. It would be interesting to know how the marriage prospered after this unhappy, though romantic, beginning.

Following *Re Sampson and Wall*, and carrying matters one stage further, Chitty, J., held, in *Re Phillips* (1887), 34 Ch. D. 467,

that where a female infant marries under seventeen, the court can, after she attains seventeen, sanction a settlement under the Act. The infant in question was not a ward and there was no question of forcing the settlement on her.

These authorities clearly establish, and it was so held in *Re Adams*, that sanction can be given to the post-nuptial settlement of the property of an infant who is not a ward. I conceive that *Re Potter* is still authority that the court cannot compel a settlement in such circumstances. And there may be cases where so long has passed since the marriage, that a proposed settlement cannot be sanctioned as not being on the occasion of the marriage (see *Re Leigh* (1888), 40 Ch. D. 290).

Landlord and Tenant Notebook.

Rent Collectors as "Owners."

THE decision in *Adams & Watts v. Southall Rating Authority* [1943] W.N. 82 is of particular interest to those who collect rent for others and who have received many unwelcome surprises in the matter of paying expenses, nuisance abatement and the like in the past. While in this case it was the other party which received the surprise, this, as a short review of the authorities will show, does not mean that general hopes should be founded on the decision, for the particular enactment interpreted contains an unusually narrow definition of the expression "owner." Most Acts of Parliament, public or private, give the term a wider meaning.

I will commence with *Peck v. Waterloo and Seaforth Local Board of Health* (1867), 2 H. & C. 709, which has been much referred to and followed in later cases. The question was whether the appellant was liable as owner for certain sewerage expenses incurred under the Public Health Act, 1848, which defined the term as "the person for the time being receiving the rack-rent of the lands and premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would receive the same if such land or premises were let at a rack-rent." The board served notice to repair a highway on one who had no title but who was shown to have exercised acts of ownership, including the giving of notice to quit to a tenant, and to have received rent from that tenant. It was held that it was immaterial whether rent was rightfully or wrongfully received. It is, perhaps, significant—or curious—that while the P.H.A., 1936, uses the same definition, the P.H. (London) Act, 1936, limits the term to "the person who for the time being is entitled to receive . . ."

In *Mayor and Corporation of St. Helen's v. Kirkham* (1885), 16 Q.B.D. 403, a definition contained in the interpretation clause of a local Act came under review. The definition commenced in much the same way as that in the P.H.A., 1848, set out above, but ended "and shall include every successive owner from time to time of such land for any part of the time during which the enactment wherein that term is used operates in relation to such land." The defendant, from whom the corporation claimed paying expenses as apportioned to a particular property, had, since the expenditure in question, collected rent from tenants of that property for the landlord. He had, in fact, actually collected more than the amount claimed; but it was not apparently disputed that when the notice and demand were given to and made upon him he had no rent in his hands, and that he had received none between then and the bringing of the action. Lopes, J., in a short judgment, said that it was perfectly clear that "owner" included agent, whether he received rent or not, and also whether the premises were let or not; further, that it included the person who was agent at the time when the corporation were seeking to enforce payment.

It may be said that that particular interpretation clause went as far as it is possible for such clauses to go. And when the great P.H.A., 1875, replaced that of 1848, the draftsmen did not take a leaf out of the St. Helen's book, but were content to repeat the 1848 definition. But the next illustration which I will give, afforded by *Broadbent v. Shepherd* (1900), 83 L.T. 505, again shows how liability may thereby be imposed on unsuspecting rent collectors. The claim was for the expenses of abating a nuisance, which was due to structural defects, and thus one in respect of which s. 94 expressly stipulated that the abatement notice should be served on the owner; in the case of other defects such notice could be on either owner or occupier. The local authority concerned actually sent two notices, one addressed to the owner, the other to the appellant in the case, who collected the rent: the former was returned because the owner in question had several namesakes at the same address. His rent-collector was more easily identifiable, and the demand was made on him accordingly. The justices dismissed the complaint, on the ground that the "owner" was liable under s. 94; Alverstone, J., delivering judgment allowing the appeal, put his finger on the spot when he observed that the authorities showed that the object of these definitions was that there should be no difficulty in enforcing the provisions of the Act. And there was a sequel to this case shortly afterwards; shortly before the remitted case was reinstated, the agent resigned, and on this the justices held that they could not make any order against him. They again

stated a case, and it was held that they were wrong again: it did not matter whether or not the agent was agent when the case was actually determined (*Broadbent v. Shepherd* [1901] 2 K.B. 274).

Perhaps the most striking instance of recent years was that of *Watts v. Battersea Borough Council* [1929] 2 K.B. 63 (C.A.). This arose under the Housing Acts of 1919 and 1925, which used the same definition as the Public Health (London) Act, 1891, and the Public Health Act, 1875. The facts were that the lessee of three small dwelling-houses left two wills disposing of them differently. Proceedings were taken by his son-in-law against his widow, who employed the appellant in the action as her solicitor. A settlement was negotiated under which letters of administration with one of the wills annexed was granted to her. Rents had been collected from the tenants, during the testator's lifetime, by a builder, and the appellant directed him to carry on, and, in fact, to pay ground rents and outgoings out of what he collected. Balances were from time to time remitted by the builder to the appellant, but the total he had received at the date of the first hearing was less than that of his bill of costs against the testator's widow.

The houses being unfit for habitation, the local council, respondents in the action, served notices, and served them on the appellant; they were not complied with; the council did the work itself and demanded payment from the appellant, who may well have wondered "why pick on me." But his contention that he was not the owner was rejected by the magistrate, whose decision was upheld by the Divisional Court.

The majority judgments in the Court of Appeal took the line that the appellant, by giving directions to and receiving payments from the builder, had acted as agent and was therefore owner. Greer, L.J., dissenting, reasoned that the builder was liable to account to the owners of the lease, and if he accounted to their solicitor that was accounting to them; when the builder had received the rent, there was no more rent to be received by anybody, and it would strain the meaning to say that any intermediary was "owner" for the purpose of the statute. In connection with the last observation, it is of interest to mention that in his judgment Sankey, L.J., said that if a boy of fourteen were sent by his father to collect weekly rents it would "hardly" be possible to say that the boy received them as agent or trustee; but the point is not developed.

It is also of interest to note that in a Northern Irish case, *Londonderry Corporation v. Gillespie & Glass* [1939] N.I. 144, the Court of Appeal concerned drew what many of us will consider a very satisfactory distinction between solicitors instructed to enforce claims for arrears of rent and solicitors authorised to collect current rent, the result being that the relevant definition did not assist the authority in overcoming the difficulty referred to by Lord Alverstone in *Broadbent v. Shepherd, supra*, and this though some of the owners were overseas.

The Middlesex County Council (General Powers) Act, 1938, s. 118, after providing for the collection of rates from "owners" who have agreed with their tenants to pay such rates, defines "owner" as "... in relation to a hereditament the person who is entitled to receive the rent payable in respect thereof," and the question in *Adams & Watts v. Southall Rating Authority* was whether, in the absence of any express reference to agents, estate agents who collected rents could be made liable. Rejecting the argument that they were "entitled to receive" the rent, the court held that those words meant "receive and keep as one's own."

Obituary.

SIR KENNETH POYSER.

Sir Kenneth Ellaston Poyser, D.S.O., K.C. (Barbados), Chief Justice of the Federated Malay States from 1939 to 1941, died on Sunday, 6th June, aged sixty-one. He was educated at Shrewsbury and Merton College, Oxford, and was called by the Inner Temple in 1906. After a long and distinguished legal career in the Colonial Empire, culminating in his appointment as Chief Justice of the Federated Malay States, he resigned from this post in order to become legal adviser to the Dominions and Colonial Offices. He received the honour of knighthood in 1941.

MR. R. W. BLYTH.

Mr. Robert William Blyth, solicitor, of Chelmsford, died recently aged seventy-six. He was admitted in 1890.

MR. D'ARCY ELLIS.

Mr. D'Arcy Brabazon Ellis, solicitor, formerly of Messrs. Ellis & Ellis, solicitors, of Burslem, Staffs., died on Monday, 17th May, aged seventy-one. He was admitted in 1894, and, until his retirement in 1941, was Magistrates' Clerk for Burslem and Tunstall.

MR. F. P. S. MURPHY.

Mr. Francis Philip Sidney Murphy, solicitor, of Messrs. F. Murphy & Son, solicitors, of Liverpool, died on Saturday, 22nd May, aged sixty-two. He was admitted in 1907.

To-day and Yesterday.

LEGAL CALENDAR.

June 7.—In May, 1834, Francis Jeffrey, advocate and man of letters, became a judge of the Court of Session, and on the 7th June he took his seat with the title of Lord Jeffrey. Four years before, he had been appointed Lord Advocate and had entered Parliament. He was fifty-seven years old, and it was too late for him to acquire the art of debating; besides, his office involved much tiresome drudgery and detail. Accordingly, he was glad when a judgeship provided a means of escape. In 1842 he was moved to the second division of the Court of Session. In court he was candid, open of mind, painstaking, patient and urbane, but he was over-voluble and had a bad habit of interposing a "running margin of questions, suppositions and comments" throughout an argument. As he aged his character mellowed and he continued to rejoice in books, natural beauty and the society of his grandchildren.

June 8.—On the 8th June, 1762, "a cause was tried at Guildhall before the Rt. Hon. Lord Chief Justice Mansfield, wherein Mr. Isaac Renoux was plaintiff and Mr. Ferres, master of Jonathan's Coffee House, defendant, for an assault by pushing the plaintiff out of his house. It being proved upon trial, that that house had been a market time out of mind for buying and selling Government securities the jury brought in their verdict for the plaintiff with one shilling damages."

June 9.—The great Spa Fields riot in 1816 was more alarming than dangerous. Roused by agitators a mob marched from Islington through Clerkenwell and Smithfield to the Royal Exchange and the Tower of London, which they summoned to surrender. At their starting point one of their leaders, James Watson, told them that ever since the Norman Conquest kings and lords had deluded them and that this must last no longer. Following a tricolour flag they plundered gunsmiths' shops on their way, but were at last easily dispersed by a few soldiers. On the 9th June, 1817, Watson was tried in the King's Bench for high treason but acquitted. Though at his lodgings there had been found a plan of the Tower and of the contemplated operations as well as a list of a committee of public safety, it would probably have been wiser to try him simply for riot.

June 10.—On the 10th June, 1679, at the Church of St. Mary the Virgin, Aldermanbury, Sir George Jeffreys, then Recorder of London, married his second wife, Lady Anne Jones, widow of Sir John Jones and daughter of Sir Thomas Bludworth, who had been Lord Mayor of London at the time of the Great Fire. She was reputed to have a sharp tongue and a contemporary lampoon declared:—

"'Tis said when George did dragon slay
He saved a maid from cruel fray;
But this Sir George whom knaves do brag on
Missed the maid and caught the dragon."

A child was born on the 10th February, 1680, and that too was remembered by his enemies. Once in cross-examining a woman who was replying pretty vigorously, he said: "Madam, you are very quick in your answers," and she rejoined: "As quick as I am, Sir George, I am not so quick as your lady."

June 11.—On the 11th June, 1570, the Inner Temple benchers ordered that "all they which hereafter shall be called to be utter barristers shall every one of them in their order moot out one whole case divided in points, according to the usage of this House, when his turn shall come next after his said calling according to his ancient in his calling, and that every such utter barrister shall continue four grand vacations and eight mean, next after his said calling, unless there be some urgent necessity in that behalf, by occasion whereof if he shall fail in keeping any the vacations aforesaid, then he shall keep other vacations instead thereof, upon pain for every such offence to pay 40s., and nevertheless to keep another vacation for that he shall so lose."

June 12.—On the 12th June, 1580, the Inner Temple benchers ordered "that such orders as heretofore have been set down for ambitious seekers to come to the bar by letters or foreign messages, shall be put in execution without favour, but it is not meant that anything which shall be done by great men of the House and others in commons shall be within this order. And it is also ordered that if any shall by private suit or otherwise go about and labour to be called to the bar he shall be punishe of that call, and it shall be noted by whose suit he was called and as one that attained the same *per ambitum*."

June 13.—On the 13th June, 1749, the King gave the royal assent to a bill "for the more easy and speedy recovery of small debts within the town and borough of Southwark and the several parishes of St. Saviour, St. Mary at Newington, St. Mary Magdalen, Bermondsey, Christ Church, St. Mary, Lambeth, and St. Mary at Rotherhithe." There were to be 132 commissioners annually nominated by the vestries of the several parishes. They were to sit every Tuesday and Friday in the Court House at St. Margaret's Hill, three commissioners forming a court. The evil that the new Act was designed to meet was the refusal of debtors to pay their debts "presuming on the discouragements which their creditors lie under from the expense which they are unavoidably put to

in suing for the same and the delays they meet with even after they have obtained judgment." The fees were moderate, for instance, "For every summons, to the bailiff 3d., to the clerk 3d. . . . For an attachment against the defendant for not appearing to the summons, to the bailiff 1s. 2d., to the clerk 6d. For giving notice to the complainant of the service of the attachment, to the bailiff 4d. . . . For a nonsuit on the plaintiff not appearing, to the clerk 2d." The commissioners were empowered to administer oaths. It was made punishable to "affront, insult or abuse" them during their sitting.

WELSH RETURNS.

Recently four out of seventeen new justices of the peace sworn at the Montgomery Quarter Sessions took the oath in Welsh, the first time, it is said, since the time of the Tudors. Unmindful of his descent, Henry VIII, by s. 17 of his statute annexing Wales to England, enacted that all courts should be kept in the English tongue and that no one speaking Welsh should hold any office under the Crown unless he used or exercised the speech or language of English. The practice of requiring evidence in Welsh to be interpreted just as if it were a West African dialect led to some absurdities. Thus once at the Carnarvonshire Quarter Sessions, when Mr. Lloyd George was presiding, a prisoner came up who spoke no English. As the jury were all Welsh and the advocates bilingual, Mr. Lloyd George decided to conduct the proceedings in the language they all spoke, but he was told that this could not be, since the shorthand-writer taking notes for the Court of Criminal Appeal knew only English. Interpretation has its pitfalls, as in the case of the Welsh-speaking prisoner who should have been informed that he might give evidence but would be cross-examined (croesholi), and was in fact told that he would be crucified (croeshoelio). English judges must also be careful. Baron Bramwell on the South Wales Circuit once fell into the trap of letting counsel for the defence address the jury in Welsh. He said: "The judge is an Englishman; the prosecuting counsel is an Englishman; the complainant is an Englishman. But you are Welsh and I am Welsh and the prisoner is Welsh. Need I say more?"

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Beames Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Sale of Joint Property.

Q. A and B (two sisters) are the owners of Blackacre in fee simple as joint tenants, both at law and in equity. A and B are at loggerheads about repairs and other matters connected with the property. A consequently desires to sell the property by public auction, but B is not agreeable, and also will not buy A's interest. A is in fact adamant that the property shall be sold, and B is equally adamant that it shall not be sold. So when an irresistible force meets an immovable object, please give your opinion of what is going to happen:—

(a) In other words, has A any statutory right to force a public sale in spite of B's opposition?

(b) And if so, how would the conveyance to the purchaser be effected, for it is certain that B would sign nothing.

A. (a) A has no statutory right to force a sale, but she can apply for a sale under R.S.C., Ord. L.I. rr. 1 and 1A.

(b) The court can order execution of the conveyance by a nominee, under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 47.

De-requisitioning of Part of Premises.

Q. May a requisitioning authority de-requisition a part only of the requisitioned premises?

A. The Defence (General) Regulations, 1939, art. 51, impose no limit on the right of requisitioning or de-requisitioning. The question is therefore answered in the affirmative.

Validity of Sub-letting.

Q. Three years ago A contracted to sell a house to B, and pending completion let him the house on a weekly tenancy. B never occupied the house himself, but sublet to C. B has not completed the purchase, and in 1941 A served notice on B under cl. 32 of The Law Society's conditions of sale requiring him to complete, which B has ignored. C has lately left the house and B has sublet to D. Consequently A has served notice to quit on B, which has not been complied with. A proposes to take proceedings in the county court against B for possession. Is he entitled to an order?

A. The subletting of the whole house is equivalent to an assignment, which entitles the landlord to possession. See *Keever v. Dean* [1924] 1 K.B. 685; *Roe v. Russell* [1928] 2 K.B., at p. 130. The facts of the case in the query are not on all fours with those in *Turner v. Walls* (1928), 44 T.L.R. 105, but that decision also supports A's claim to possession.

Our County Court Letter.

Right of Way.

IN *Cramp v. Colterill*, at Bromsgrove County Court, the claim was for £5 damages and an injunction in respect of an obstruction of a right of way to the plaintiff's land near Beacon Hill, Rubery. The plaintiff's case was that he had bought his plot of back land in 1940, and his conveyance gave him a right of way, ten feet wide, for horses, carts and other vehicles over a strip of land leading to Beacon Hill, which was the nearest highway. In 1942 the defendant had bought the adjacent plot, fronting to Beacon Hill, and forming the northern boundary of the right of way. In November, 1942, the defendant had erected five posts on what he contended was his own property, but the effect was to reduce the width of the plaintiff's right of way to five feet. It was therefore useless for the purpose of taking vehicles to the plaintiff's land. The defendant's case was that he had not obstructed the right of way. The deeds of all the adjoining properties (including those of the plaintiff and the defendant) contained plans which were copied from a sale plan from a catalogue of an auction sale in 1922. In 1933, the owner of a plot of land (on the opposite side of the right of way) had built a garage. The original hedge, marking the southern boundary of the right of way, had been grubbed up and replanted by that owner about five feet nearer the two plots at present owned by the plaintiff and the defendant. A survey of the defendant's plot had shown that his posts were in fact erected on his own ground. The encroachment was, therefore, not by the defendant, but by the owner of the plot on the opposite, or southern, side of the right of way. The latter owner had recognised this, and, between the issue of the summons and the trial, the hedge on the southern side of the right of way had been restored to its original line. The result was that the plaintiff had now had his ten-foot way restored, but the obstruction had never been by the defendant. His Honour Judge Roope Reeve, K.C., observed that the owner of the plot on the southern boundary of the right of way had not been brought before the court as a third party. Any judgment would only be binding on the actual parties, and, in view of the recent course of events, the question outstanding was chiefly that of costs. The plaintiff had succeeded in establishing that he was entitled to a ten-foot right of way, but the defendant had proved that the obstruction had not been by him. The plaintiff's contention that the proceedings had induced the defendant to procure the restoration of the ten feet was inaccurate. The defendant had offered an inspection of his deeds, which had been refused. The result of the action could have been reached by negotiation, without any litigation. Judgment was given for the defendant, with costs, on Scale B, including a surveyor's qualifying fee.

The Adjustment of Liabilities.

IN a case at Evesham County Court (*In re Simpkins*), an application was made for a protection order under the Liabilities (War-Time Adjustment) Act, 1941, s. 3. The case for the applicant was that a temporary protection order had already been made, and the case had been referred to the Liabilities Adjustment Officer for his report. Prior to the war, the applicant had been in business as a building contractor at Pershore. In 1940 he undertook contracts for the Government but they were unsuccessful. It was now proposed to pay 5s. in the £ to the unsecured creditors, and a further 5s. in six months time. The case could then be reviewed by the court. The position was that the applicant had assets, but no money in the bank. The case was therefore within the scope of s. 3 (1) (b) of the above Act. His Honour Judge Roope Reeve, K.C., observed that the applicant had a speculative war-time business. He had got himself into difficulties by taking Government contracts without having the equipment to carry them out. Assets were alleged to exist, but it appeared that the applicant was insolvent. The application was dismissed.

The Temporary Housing of Bombed-out Families.

IN *Birmingham Corporation v. Planton*, at Birmingham County Court, the claim was for possession of a flat. The plaintiffs' case was that the flat was part of a house which they had requisitioned under Defence Regulation 51. The defendant had been permitted, with her husband and children, to occupy the flat under an agreement dated the 11th September, 1942. This gave "licence and authority" to occupy the flat, and contained no reference to possession, to landlord and tenant, or to a tenancy. Clause 5 provided for determination of the licence on seven days' notice. This was given, and expired on the 29th March, 1943. The weekly payments were then £19 18s. 6d. in arrear. At the date of trial the arrears were £25 6s. 6d. The defendant claimed the protection of the Rent Acts. Although the agreement purported to create a mere licence, the plaintiffs had subsequently recognised the defendant as a tenant, e.g., a letter of the 16th March mentioned the "rent having been paid since the commencement of your tenancy"; the notice to quit referred to the defendant as "tenant." A rent book had also been issued, but this contained the following

notice: "The usual conditions of tenancy are not applicable. Reference should be made to the agreement between the occupier and the Corporation." His Honour Judge Dale observed that in "Woodfall's Law of Landlord and Tenant" (24th ed., 1939), p. 8, it is stated: "The question is in all cases whether the arrangement made between the parties confers upon the tenant a right to the exclusive possession of any property." On the other side of the line there might be the position exemplified in *Clore v. Theatrical Properties, Ltd.* (1938), 3 All E.R. 483, in which there is no exclusive right to possession, but merely the right to exercise certain privileges in property. The question of whether it was a licence or a letting was one of fact, and it was necessary to consider the intention of the parties—apart from the mere words used. In *Daly v. Edwards* (1900-1), 82 L.T. 372, the parties actually used the words, "landlord and tenant" and "lease." Nevertheless the House of Lords held that the words were not conclusive evidence that the relationship of landlord and tenant had been created. The evidence in the present case was that the plaintiffs, having requisitioned the house, had permitted the defendant and her family (who had been rendered homeless by enemy action) to live for the time being in the flat—until they could find a proper place to live in. The licence was therefore determinable at the will of the person giving it. The result was that the plaintiffs were entitled to possession of the property. Even if a tenancy had been created, the arrears of rent were such that a final order for possession could properly be made. Judgment was given accordingly, with costs.

Birthday Legal Honours.

KNIGHTS BACHELOR.

Mr. Justice CLIFFORD MONMOHAN AGARWALA, Puisne Judge, High Court, Patna.

Mr. GRAHAM CUNNINGHAM, Controller General of Munitions Production, Ministry of Supply. Admitted 1915.

Mr. JOHN FOX, Chief Registrar of Friendly Societies and Industrial Assurance Commissioner. Admitted 1905.

Alderman FREDERICK HINDLE, for public services in Lancashire. Admitted 1899.

Mr. Justice HARILAL JEKISONDAS, Puisne Judge, High Court, Bombay.

Mr. ARNOLD DUNCAN MCNAIR, Vice-Chancellor, Liverpool University. Called by Gray's Inn, 1917.

Mr. HARRY NELL, Controller of Death Duties, Board of Inland Revenue.

Mr. GEORGE GRAHAM PAUL, Chief Justice, Sierra Leone.

Mr. GEORGE STANLEY POTT, President, Council of The Law Society. Admitted 1896.

Mr. E. C. H. SALMON, Clerk of the L.C.C., for services to civil defence.

Mr. JOHN LEONARD STONE, Chief Justice Designate, High Court, Bombay. Called by Gray's Inn, 1923.

ORDER OF THE BATH.—C.B.

Mr. E. F. CLIFF, lately Principal Establishment Officer, Air Ministry, now Treasury Establishment Representative in Washington. Called by Gray's Inn, 1913.

Mr. E. V. THOMPSON, Principal Assistant Solicitor, Office of H.M. Procurator-General and Treasury Solicitor. Admitted 1907.

ORDER OF ST. MICHAEL AND ST. GEORGE.—K.C.M.G.

Sir WILLIAM ALISON RUSSELL. Called by Inner Temple, 1900.

IMPERIAL SERVICE ORDER.—COMPANION.

Mr. J. E. JONES, Registrar, High Court, Nyasaland.

ORDER OF THE BRITISH EMPIRE.—C.B.E.

Mr. F. KHAYAT, Puisne Judge, Supreme Court, Palestine.

Mr. P. KITCHEN, A.R.P. Controller and Town Clerk, Middlesbrough.

ORDER OF THE BRITISH EMPIRE.—O.B.E.

(MILITARY DIVISION.)

Lieut.-Col. G. W. GRAHAM-BOWMAN, Cumberland H.G. Admitted 1921.

Lieut.-Col. A. S. LAMBERT, E. Riding H.G. Admitted 1920.

ORDER OF THE BRITISH EMPIRE.—O.B.E.

(CIVIL DIVISION.)

Mr. J. GLAISYER, Registrar, Birmingham Probate Registry.

Mr. J. C. P. KINSMAN, Senior Legal Assistant, Office of H.M. Procurator-General and Treasury Solicitor. Called Lincoln's Inn, 1906.

Mr. A. A. MOFFAT, Town Clerk, Ipswich. Admitted 1906.

Mr. W. T. PRIE, Town Clerk and A.R.P. Controller, Willesden. Admitted 1932.

Mr. F. G. WEBSTER, Town Clerk, Carlisle. Admitted 1921.

ORDER OF THE BRITISH EMPIRE.—M.B.E.

Mrs. C. M. TUCKER, Private Secretary to the Lord Chancellor.

Mr. J. WHITEHEAD, Civil Defence District Controller, Co. Durham. Clerk to Billingham U.D.C.

Review.

Commodity Control. By J. BRAY FREEMAN, of the Inner Temple, Barrister-at-Law, and N. HOWARTH HIGNETT, Solicitor of the Supreme Court. 1943. Royal 8vo. pp. xlv and (with Index) 298. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Many complaints have recently been made of the obscurity, complexity and bulk of the emergency legislation. Two of the objects set themselves by the authors of this interesting volume are the achievement of a clear explanation of a major branch of that law, and the reduction of its interlocking and amorphous provisions to an orderly system. These ambitious objects have been achieved with a remarkable degree of success. Business men and lawyers alike will find this book an indispensable guide through the maze, and copious footnotes facilitate quick reference to the actual text of the law for those who require it. The magnitude of the task explains why it was not accomplished at an earlier date. At a rough guess based on the Table of Statutory Rules and Orders there must be nearly 1,400 of these dealt with. The method adopted is to explain the origin of ministers' war-time powers, the manner of their delegation, and then to deal in detail with the control of commerce and industry under such heads as "Control of Employment," "Imports and Exports," "Price Control," "Control Applied to Special Industries," and so on. The practical nature of the work is rounded off by an inclusion of such non-legal matter and a section on the Government plan for the concentration of production, with the text of the explanatory memorandum on the subject. The appendices contain useful lists of addresses of the various authorities administering the different controls. The relative prominence accorded to the different aspects of the new law is nicely graded, although here and there one may venture a criticism, for instance on the relegation of *Liversidge v. Anderson* [1942] A.C. 206, to a footnote (p. 20). No doubt the necessity for condensation and for producing a severely practical volume have placed restrictions on the fuller discussion of the more interesting aspects of case law. This does not in the least detract from the complete success attained by the authors and publishers, who deserve hearty congratulation on their fulfilment of a great need.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 3rd June:—

Consolidated Fund (No. 3).
Housing (Agricultural Population) (Scotland).
Sunderland Corporation.
War Damage.

HOUSE OF LORDS.

Bridgwater Gas Bill [H.C.]	
Read Second Time.	[3rd June.
Catering Wages Bill [H.C.]	
Read Third Time.	[3rd June.
Coal Bill [H.L.]	
Read Second Time.	[8th June.
Telegraph Bill [H.C.]	
Read First Time.	[8th June.

HOUSE OF COMMONS.

Finance Bill [H.C.]	
In Committee.	[3rd June.
Foreign Service Bill [H.C.]	
Read First Time.	[2nd June.
Northampton Corporation Bill [H.C.]	
Read Third Time.	[8th June.
Railway Freight Rebates Bill [H.L.]	
Read Third Time.	[2nd June.

QUESTIONS TO MINISTERS.

REMOVAL OF RAILINGS AND LIABILITY FOR ACCIDENTS.

Brigadier-General BROWN asked the Parliamentary Secretary to the Ministry of Works what is the position of an owner or occupier who is prosecuted for employers' liability for accidents or straying animals owing to the forcible removal of gates or railings by his orders under Defence Reg. 50b; and whether he will be responsible for the liability in such cases.

Mr. HICKS: It is not clear in what circumstances the removal of gates and railings which are not essential to the use of the land could give rise to a claim of the nature suggested. But the hon. and gallant Member is no doubt aware of the latter part of para. (3) of reg. 50 by which the occupier of land from which railings are removed is relieved of any liability by reason of the removal of the railings. Railings which are essential to the use of land are not, of course, removed. [1st June.

The usual monthly meeting of the directors of the Law Association was held on the 31st May, Mr. G. D. Hugh Jones in the chair. There were seven other directors present and the Secretary. The sum of £959 was voted in renewal of allowances to pensioners and grants to applicants, and other general business was transacted.

Notes of Cases.

APPEALS FROM COUNTY COURT.

Dick v. Pillar.

Scott and du Parcq, L.J.J., and Croom-Johnson, J. 4th May, 1943.

County court practice—Right of appeal to Court of Appeal—Refusal to adjourn—When appeal lies—Admissibility and weight of medical evidence—County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 105—Evidence Act, 1938 (1 & 2 Edw. 8, c. 28), s. 1 (5) and 2.

Defendant's appeal from a decision given by His Honour Judge Konstam at Epsom County Court.

The action was a claim for £60 on a dishonoured cheque, or alternatively for £51 8s. 1d., and was brought by an agent against his principal on a running account between them for work and labour done and payments due in connection with the training of racehorses. The claim on the cheque was not persisted in. The defendant pleaded that some of the items were either not claimable or excessive, as not being in accordance with oral agreements between the parties, so that the defendant owed £30 13s. 7d. at the most. He also pleaded a set-off of £22 17s. 4d. in respect of alleged overcharges on former accounts, and also that £8 1s. 7d. which he paid into court with an admission of liability was enough to satisfy the plaintiff's claim. The action was fixed for hearing on 16th September, and on that date defendant's counsel applied for an adjournment on the ground that the defendant had been called away to Scotland on the previous Monday on urgent business and that his evidence was vital to the defence. He offered on the defendant's behalf to pay the costs thrown away by the adjournment. The judge ordered that the plaintiff's case should proceed and said that he would consider adjourning later for defence. The plaintiff's case was begun but was not concluded on 16th September, and the case was adjourned part heard to 28th October, 1942, the judge ordering that if the defendant was not there on 28th October the case would be decided in his absence. For the convenience of counsel the parties later agreed to further adjournments, and ultimately they agreed to postponement to 9th December, a doctor's certificate that the defendant was ill with bronchitis being filed with the consent. On 2nd December the defendant's doctor certified in writing that the defendant was unable to follow his occupation by reason of ill health. On the next day the defendant's solicitors wrote to the plaintiff's solicitors, enclosing a copy of the doctor's certificate and asking them to sign a consent to a further adjournment. The plaintiff's solicitors wrote refusing on 5th December, stating that they had received information that the defendant had stated that they would not get him to go to court, and that he had also been instrumental in approaching witnesses who had already given evidence on the plaintiff's behalf to give further evidence on his own behalf. The defendant's solicitors replied on 7th December that the matter could have been disposed of on 28th October if the plaintiff's solicitors had not asked for an adjournment. They enclosed a fresh medical certificate, which stated that the defendant was "unable to leave home probably for two weeks." On 9th December, the defendant's counsel read the correspondence to the judge and offered that the defendant should pay the cost of a further adjournment. He told the judge that the doctor could attend the court or swear an affidavit. The judge refused the adjournment, and entered in his notes the words "in absence of affidavit." The plaintiff's case was then heard, and at its end the defendant's counsel renewed his application for an adjournment, and it was refused. The defendant's counsel then called one witness, but not the defendant, and closed his case. The judge reduced the plaintiff's claim to £44 3s. 10d., and gave judgment for that amount, with costs. The defendant appealed on the grounds that judgment was given without hearing the evidence of the defendant, who was unable to attend the court, as shown by medical certificates, the judge being informed that the certificates could be verified by the oath of the doctor.

SCOTT, L.J., said that in his view if an important witness, *a fortiori* if he is a party, was prevented by illness from attending the court for an adjourned hearing at which his evidence is directly and seriously material, if the judge was satisfied of the medical facts and of the relevance and possible importance of the evidence, it was his duty to give an adjournment, possibly on terms, unless satisfied that an injustice would be done to the other side which could not be reduced by costs. On the facts of this case the judge went wrong because these conditions were satisfied and no suggestion was made that an injustice would be done to the plaintiff. The absence of an affidavit was a wholly inadequate reason in law for depriving the defendant of a hearing. Under s. 1 (5) of the Evidence Act, 1938, the medical certificate should have been accepted without an affidavit. SCOTT, L.J., referred to *Maxwell v. Keun* [1928] 1 K.B. 648, 657, 659, and *Jones v. S. R. Anthracite Collieries*, 90 L.J.K.B. 1315, and said that the appeal must be allowed and the case remitted to the county court for rehearing, the appellant to have the costs of the appeal and the costs below to be in the discretion of the county court judge.

DU PARCQ, L.J. (dissenting), said that the only question was whether the judge's decision was a determination in point of law or on the admission or rejection of evidence, within s. 105 of the County Courts Act, 1934. His lordship referred to *How v. L. & N.W. Railway Co.* [1892] 1 Q.B. 391; *Metropolitan Railway Co. v. Wright* (1886), 11 A.C. 152; *Brown v. Dean* [1910] A.C. 373; and *Henderson v. Clifford Watmough & Co.* (1939), 83 Sol. J. 747, and said that there was nothing to show whether the judge had present to his mind the Evidence Act, 1938, ss. 1 (5) and 2, and deliberately exercised his discretion by refusing to act on the certificates. If he had, it was impossible to say that the judge erred in law, but if he had not, the defendant could not found a complaint on this, as his counsel did not take the point before the judge that the certificates were admissible under the Act. *Evans v. Bartlam* [1937] A.C. 473 had no bearing on

the present case but was exclusively concerned with appeals from judges of the High Court. *Jones v. S. R. Anthracite Collieries, Ltd.*, 90 L.J.K.B. 1315, could not be an authority for the proposition that an appeal could lie from a county court judge's decision on a question of fact, and could not justify this court in imposing a statutory limitation on its powers, which it was under an elementary duty to observe.

CROOM-JOHNSON, J., gave judgment agreeing with that of Scott, L.J. Appeal allowed.

COUNSEL: J. L. Poole; H. M. Pratt.

SOLICITORS: A. W. Rhodes & Co.; Tuck & Mann.

[Reported by MAURICE SHARR, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

Dennis & Sons, Ltd. v. West Norfolk Farmers Manure and Chemical Co-operative Co., Ltd.

Simonds, J. 18th May, 1943.

Practice—Discovery—Company claims privilege for report of its accountants—Shareholders' right to production.

Procedure summonses.

The articles of association of the defendant company provided that it should carry on business on co-operative lines. Article 7A provided that profits in excess of a certain amount should be applied in payment of rebates. Disputes arose as to the construction of this article and the company on the 8th January, 1938, instructed its accountants to report on the effect and construction of the article. That report was sent to the company on the 5th February, 1938. The plaintiff company, who were shareholders in the defendant company, took out a summons on the 3rd February, 1938, to have the articles construed by the court. Bennett, J., gave judgment on the question then raised. In consequence of that decision, the defendants proposed to alter art. 7A, and the plaintiffs started the present action for a declaration that such alteration was *ultra vires*. By this summons the plaintiffs asked for the production of the accountants' report. The defendants contended that the report was privileged.

SIMONDS, J., said that two points were raised, first, whether, having regard to the circumstances in which and the date when the report was made, it was a privileged document; secondly, whether, even if it were otherwise a privileged document, it was privileged having regard to the fact that the plaintiffs were themselves shareholders in the company which asserted the privilege. He had formed a clear opinion on the second point, which disposed of the case. The general rule, which applied equally between a company and its shareholders and between a trustee and his beneficiaries, was thus stated in the "Annual Practice," 1943 (pp. 518, 519): "*Cestui que trust* . . . is entitled to see cases and opinions submitted and taken by the trustee for the purpose of the administration of the trust; but where taken and stated by the trustees not for that purpose, but for the purpose of their own defence in litigation against themselves by the *cestui que trust*, they are protected. . . . In *Gouraud v. Edison Bell Telephone Co.* (1888), 57 L.J. Ch. 498, shareholders, in an action against the company, were held entitled to see communications between the company and their solicitors." When in January, 1938, the company instructed the firm of chartered accountants to report, the directors were doing something on behalf of all the shareholders. The plaintiffs, by instituting proceedings two days before the report was received, did not lose their right to see it. The report was not obtained by the defendant company for the purpose of defending themselves against hostile litigation. It was only in that case that privilege could be claimed. The rules as to privilege were strict and must not be extended. As no privilege had attached to the report in the old proceedings, no new privilege had attached to it now, and he would direct that the document should be open to inspection by the plaintiffs.

COUNSEL: Winterbotham (for G. Upjohn, on war service); J. A. Reid (for P. J. Sykes, on war service).

SOLICITORS: Kenneth Brown, Baker, Baker; Clifford-Turner & Co.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re St. James's Court Estate, Ltd.

Simonds, J. 24th May, 1943.

Company—Scheme of arrangement—Proposal to convert issued preference shares into redeemable preference shares—Whether scheme an "issue of shares"—Reduction of capital—Procedure—Companies Act, 1929 (19 & 20 Geo. 5, c. 23), ss. 46, 153.

Petition.

The company was incorporated in 1927 as a company limited by shares with a capital of £425,000, divided into 200,000 preference shares of £1 each and 225,000 ordinary shares of £1 each. All the shares had been issued and were fully paid up. Under the company's memorandum of association the holders of the preference shares were entitled to a fixed cumulative preferential dividend at the rate of 6½ per cent. per annum and in a winding up to repayment of capital together with arrears of dividend in priority to the ordinary shares. The dividend on the preference shares was in arrears from July, 1939, and amounted to £45,000. The position of the company was improving, but heavy expenditure for repairs and renewals was required. By a scheme of arrangement dated 5th March, 1943, it was proposed that the company should pay a dividend of 11½ per cent., less tax, amounting to £23,000 to the holders of the preference shares and the remainder of the arrears of dividend were to be cancelled. The preference shares were to be converted into redeemable preference shares, by the same being surrendered to the company and forthwith reissued in the form of redeemable preference shares credited as fully paid up. Lastly, the ordinary shareholders were to contribute rateably 30,000 ordinary shares for distribution amongst the preference shareholders and a sinking fund was

to be surrendered so as to make the proceeds available for the company's business. Consequential amendments were to be made in the articles. Pursuant to an order of the court, meetings were held on the 29th April, 1943, of the preference and ordinary shareholders, when the scheme was duly approved. At an extraordinary meeting of the company held on the same day, a special resolution was passed approving the scheme and the directors were directed to carry it into effect. At the same extraordinary general meeting a further special resolution was passed (conditional upon the scheme being sanctioned by the court) for the alteration of the articles of association by authorising the issue of redeemable preference shares. By this petition the company asked that the court might sanction the scheme of arrangement, and, in the alternative, if the court should consider that the scheme did involve a reduction of capital that the reduction effected by the special resolution might be approved. Section 46 of the Companies Act, 1929, provides: "Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed." The learned judge was referred to the decision in the County Palatine Court of Lancaster of Sir John Bennett, V.-C., in *In re Ellenwood Ring Mill, Ltd.*, 86 Sol. J. 235, where a scheme providing directly for the conversion of issued shares into redeemable shares was sanctioned.

SIMONDS, J., refused to sanction the scheme in its then form. He stated that in his opinion s. 46 did not authorise the conversion of issued preference shares into redeemable preference shares. He considered it involved a reduction of capital. He did not consider the special resolution of the 29th April, 1943, sanctioning the scheme, which did not specify that there was to be a reduction of capital and an increase of capital, was a valid resolution for reduction and increase of capital. He indicated that he might be prepared to sanction the scheme, if resolutions were duly passed for the reduction of the company's capital by the cancellation of the 200,000 preference shares and, upon such reduction taking effect, for the increase of the capital to £425,000 by the issue of 200,000 redeemable cumulative preference shares. He accordingly stood the petition over to afford the company an opportunity of submitting such resolutions to its members.

COUNSEL: *Harold Christie, K.C.*, and *T. D. Davine*.

SOLICITORS: *Barnett, Tuson, Hood & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Societies.

THE LAW SOCIETY.

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, 9th July, 1943, at 2 p.m.

The following are the names of the members of the Council retiring by rotation: Mr. Bateson, Mr. Burgin, Mr. Collins, Mr. Haldane, Lord Hemingford, Sir Edwin Herbert, Sir Randle Holme, Mr. Humbert, Col. Mackenzie Smith, Mr. Webster.

So far as is known, with the exception of Mr. Humbert, they will be nominated for re-election.

There is one other vacancy caused by the death of Mr. Edmund Reynolds Willoughby Radcliffe.

THE LAW ASSOCIATION.

126TH ANNUAL GENERAL COURT.

The 126th annual general court of the Law Association was held on 3rd June at The Law Society's Hall in Chancery Lane. The Rt. Hon. Lord Blanesburgh, who presided, said, in moving the adoption of the report and accounts, that the income of the Association was very nearly at the level of the previous year. It amounted to £2,538, of which sum £2,523 had been expended upon the charitable work of the Association, and the small balance represented the very modest administrative expenses. The income from investments was satisfactory, and as the investments were in gilt-edged securities the income was not likely to be seriously reduced in the near future.

The income available for distribution, the President continued, was shared not only by dependents and representatives of members of the Association, but to a substantial extent by dependents of members of the profession who had not belonged to the Association. The proportion so distributed varied from year to year. Last year £766 was distributed amongst thirteen members' cases and £1,401 amongst forty-four non-members' cases. Taking the record of the Association from its commencement, relief to the amount of £105,809 had been granted to members and their families, and £59,699 to non-members and their families, a total of £165,508. He concluded by reading a letter of grateful appreciation from a widow, one of the beneficiaries, who described the board as "the kindest men alive."

Mr. G. D. HUGH JONES, chairman of the board, in seconding the motion, said that he hoped members would find the account of the directors' stewardship not wholly unsatisfactory. The total number of members was 863. There had been a certain loss of investment income owing to the redemption of some stock at par and its reinvestment at a lower rate of interest. He hoped that this might be made good by some increase of membership. The last annual report of The Law Society showed that the London solicitors who were members of the Society numbered 3,841. He desired to see the Association embrace at least 25 per cent. of that number; this would mean an addition of almost exactly 100 members. On asking solicitors to join the Association one was often met with the reply, "I subscribe to the Solicitors' Benevolent Fund." Frankly, he did not think that was a very good answer. The retort to it might be made in Biblical language: "This ought thou to have done, but not to have left the other

undone." The Association worked in close co-operation with the Solicitors' Benevolent Association, from whose efficient and sympathetic secretary and almoner it received every assistance. Suggestions had been made that steps should be taken to amalgamate the two bodies, but there were difficulties which, they had been advised, were insuperable. There could be no such amalgamation without an Act of Parliament, and this it would be almost impossible to secure at the present time. Moreover, he was not certain that in dealing with the question of administration of a charity over-centralisation was a good thing. Decentralisation was more likely to secure that the benefits were awarded to worthy cases and to worthy cases alone.

The report was adopted unanimously, and Mr. HUGH JONES then moved the re-election of Lord Blanesburgh as President, mentioning that this was his twenty-third year in the chair. Mr. E. B. BESANT seconded, and the proposition was carried with acclamation. LORD BLANESBURGH remarked that this was almost his last link with the profession to which he was devoted, and there was nothing he more appreciated than this honour done him from year to year. On the motion of Mr. JOHN VENNING, Lord Justice Luxmoore, Mr. Justice Macnaghten and The Rt. Hon. Lord Hemingford were elected Vice-Presidents. In moving the re-election of the directors, Mr. P. STORMONTH DARLING, speaking as director of the sister institution and as one who knew something of the work of the Association, said that the profession owed a great deal to the amount of time and care given by the various officers to its affairs.

The meeting closed with the usual motion, proposed by The Rt. Hon. E. LESLIE BURGIN, M.P., of thanks to Lord Blanesburgh for the dignified and graceful way in which he had presided for so long over the Association's affairs.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

- No. 777. Aliens (Movement Restriction) (No. 2) Order, May 27.
- No. 778. Aliens (Protected Areas) Order, May 27.
- E.P. 761. Board of Trade Information and Inspection (Revocation) Order, May 27.
- E.P. 780. Control of Motor Fuel Order, May 27.
- E.P. 781. Control of Motor Fuel Order, 1942, General Direction (Declarations) No. 1, May 27.
- E.P. 789. Control of Noise (Defence) (No. 3) Order, May 27.
- E.P. 790. Food (Points Rationing) Order, 1943. Amendment Order, May 29.
- E.P. 771. Motor Vehicles (Control) Order, May 20.
- No. 765. Registration of Births and Deaths, Abroad (Consular Officers) Regulations, May 20.
- No. 736. Trading with the Enemy (Specified Persons) (Amendment) (No. 8) Order, May 25.
- E.P. 775. Vessels (Immobilisation) (Amendment) (No. 2) Order, May 25.
- E.P. 772. Vessels on Inland Waters (Immobilisation) Order, May 20.
- No. 750. Visiting Forces (Royal Australian Air Force) Order in Council, May 20.

STATIONERY OFFICE.

List of Statutory Rules and Orders. May, 1943.

Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. S. G. CLARKSON to be the Registrar of the Norwich, Harleston, N. Walsham, Great Yarmouth, East Dereham, and Wymondham County Courts and District Registrar in the District Registries of the High Court of Justice in Norwich and Great Yarmouth as from the 1st June, 1943.

The Colonial Office announce that Mr. CLEMENT MALONE, Puisne Judge of the Supreme Court of the Windward Islands and Leeward Islands, has been appointed Chief Justice of those islands. He was called by the Middle Temple in 1916.

Notes.

Two witnesses for the prosecution in a case at Middlesex Sessions recently had travelled from Newcastle-on-Tyne to give evidence which consisted of a few sentences, and lasted for about a minute altogether. Mr. G. D. Roberts (defending) said that he had no questions to ask them, and added: "It seems a wicked waste of time and money."

In consequence of the resignation, through ill health, of Sir William Whyte, and the death of Mr. G. L. Vigers, the Chancellor of the Exchequer has made the following appointments to the War Damage Commission: Miss Myra Curtis, Principal of Newnham College, Cambridge; Sir Basil Gibson, former town clerk of Sheffield; Mr. J. R. Rutherford, Convenor of the County of Dunbarton. Mr. Rutherford, like Sir William Whyte hitherto, will deal particularly with the administration of the War Damage Act in Scotland.

Mr. A. W. Cockburn, K.C., deputy chairman, at London Sessions recently ruled that "when cucumbers are pickled they cease to be cucumbers." The Appeals Committee upheld appeals against convictions and fines for buying 11 cwt. of cucumbers by wholesale at a price exceeding the permitted maximum; and convictions and fines for selling cucumbers by wholesale at an excessive price were also quashed. One appellant said he was not a wholesaler but a retailer because he did not resell fresh cucumbers but pickled them and sold them loose as gherkins.

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